



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sargent Controls

File: B-224313.3

Date: January 14, 1988

DIGEST

1. Agency properly did not consider alleged cost savings accruing from protester's offer to waive termination costs otherwise claimed under a predecessor contract since these costs are speculative and the solicitation did not provide for their consideration.

2. Speculation that the agency may have improperly evaluated proposals does not provide a valid basis for protest.

DECISION

Sargent Controls protests the award to Leslie Controls, Inc. of a contract for lithium bromide steam control valves and related data and services under request for proposals (RFP) No. N00024-86-R-4026(Q), issued by the Department of the Navy. Sargent contends that since, under the RFP evaluation criteria, technical factors were more important than price, Sargent is entitled to the award because its technical proposal was higher rated than Leslie's. Sargent also asserts that it offered a lower price than Leslie, and further that the Navy failed to evaluate Sargent's offer to re-commence performance under a prior terminated contract and waive its claim for termination costs if awarded this contract.

We find the protest without merit.

The RFP under which Sargent was originally awarded a contract required offerors to provide unlimited rights in all technical data, and to either incorporate the price for these rights into the proposal or provide an option price for the rights. Of the three proposals (from Leslie, Sargent and Vacco Industries) in the competitive range, only Sargent's included the required unlimited data rights.

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As a result, while Leslie's proposal (which was at a lower price than Sargent's) received the highest technical score from the Navy, award was made to Sargent. Subsequently, Leslie and Vacco protested to our Office that the unlimited data rights requirement was unwarranted and the Navy determined that the requirement was, in fact, improper. As a result, the Navy terminated Sargent's contract for convenience and decided to resolicit without the unlimited data rights requirement. Sargent submitted a claim for termination costs to the Navy without any detailed supporting data, which claim has not yet been resolved. Meanwhile, the Navy resolicited the requirement by amending the original RFP to delete the unlimited data rights requirement and by seeking new best and final offers (BAFO's). Leslie, Sargent and Vacco responded with new BAFO's, including price and technical proposals.

The Navy evaluated the BAFO's and Leslie's technical proposal was again the highest rated. On September 21, award was made to Leslie on the basis that Leslie's proposal was the most advantageous to the government based on its highest weighted technical and cost score. In making this determination, the Navy evaluated Sargent's price as \$852,785, which included \$14,160 for a required line item for which Sargent had provided a unit price but failed to extend by the required number of units and had omitted from its total price calculation. Sargent's stated total price was \$838,625. Leslie's price was \$851,988. Leslie's technical score was approximately 6 percent higher than Sargent's technical score. Vacco's proposal was highest priced and received the lowest technical score.

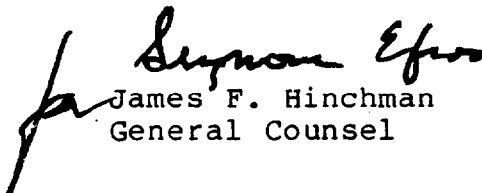
In its BAFO, Sargent indicated that if it received the award it would resume performance under the terminated contract and would waive its right to termination costs otherwise due under the terminated contract. Sargent contends that this would have saved the government \$125,000 in termination costs and asserts that this savings should have been considered in evaluating its proposal. The simple answer to this allegation is that the RFP did not provide for the evaluation of this alleged cost savings. An RFP must advise offerors of all of the evaluation factors which will be applied and an agency may not apply unstated evaluation criteria in evaluating proposals. Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 C.P.D. ¶ 386. In addition, as the Navy correctly asserts, inclusion of such a factor in the RFP would have been improper because the amount of the termination costs actually due to Sargent has not been determined and is indefinite and not susceptible of reasonable quantification. See Comdisco, Inc., 64 Comp. Gen. 11 (1984), 84-2 C.P.D. ¶ 416.

As for Sargent's assertion that it submitted the highest technically rated proposal, Sargent is simply incorrect. As indicated above, Leslie's proposal received the highest technical score.

Sargent now speculates that the offers may have been improperly evaluated. Sargent, however, has provided no specific allegations in this regard, and mere speculation provides no basis to sustain a protest. American Identification Products, Inc., B-227599, July 13, 1987, 87-2 C.P.D. ¶ 42. Further, there is nothing in the record which supports Sargent's speculation.

Finally, we need not address Sargent's allegation that its price was actually \$838,625, rather than the corrected \$852,785 price which was used by the Navy in its evaluation. Technical considerations were more important than cost under the RFP evaluation criteria and, even if Sargent's price was 1.5 percent lower than Leslie's, this relatively minimal price difference was more than offset by the Leslie proposal's technical superiority. In this respect, the Navy has recalculated the weighted total scores in its report, and Leslie's score remains high even if Sargent's claimed lower price is used in calculating Sargent's total score.

The protest is denied.


James F. Hinchman
General Counsel